

1
2
3
4
5
6 UNITED STATES DISTRICT COURT
7 WESTERN DISTRICT OF WASHINGTON
8 AT SEATTLE

9 KICHUL LEE, *et al.*,

10 Plaintiffs,

11 v.

12 MICHAEL MUKASEY,
13 Attorney General *et al.*,

14 Defendants.
15

Case No. C04-0449RSL

THIRD ORDER REGARDING
ENFORCEMENT OF SETTLEMENT

16 This matter comes before the Court on “Defendants’ Status Report
17 Regarding Order Regarding Second Motion to Enforce Compliance” (Dkt. # 217) and
18 “Defendants’ Second Status Report Regarding Order on Second Motion to Enforce
19 Compliance” (Dkt. # 259).

20 Defendants voluntarily undertook a contractual duty to adjudicate class
21 members’ N400 applications within the “normal Seattle District Office processing time.”
22 In previous orders, the Court found that defendants are not meeting their settlement
23 obligations and ordered the prompt adjudication of thirty-four applications or a statement
24 of individualized reasons for any continuing delay. Dkt. # 205 and # 216. The Court
25 specifically noted that the pendency of an FBI background or name check was an
26
27
28

1 unacceptable explanation for extraordinary delays.¹ Dkt. # 216 at 3. Nevertheless,
2 defendants again rely on generalized excuses, particularly the FBI's involvement, when
3 explaining why a number of applications have not yet been processed. Defendants even
4 express surprise that they might be expected "to obtain information regarding the
5 applicants' name checks from the FBI" and request at least six weeks if such information
6 is required. Reply at 2.

7 The source of defendants' surprise and confusion is unclear. The excuses
8 on which defendants rely were already found to be insufficient. Defendants were
9 informed on May 19, 2008, that they must provide specific information regarding a
10 particular application in order to justify an extraordinary delay in processing time and that
11 they cannot rely on activities that are undertaken with regards to every applicant. If
12 applications could not be timely processed because of name check delays, the Court
13 demanded the kind of detailed information that was clearly within the FBI's ken. Why
14 efforts were not made to acquire the relevant information from the FBI during the past
15 three months is inexplicable.

16 Having reviewed the submissions of the parties and the remainder of the
17 record in this matter, it is hereby ORDERED that:

18 (1) Defendants shall, within seven days of the date of this Order, review and
19 amend the information provided to plaintiffs' counsel pursuant to Paragraph 8 of the
20 Settlement Agreement to include the date on which defendants received the class
21 members' N400 applications. The receipt dates of applications that have already been
22 adjudicated need not be provided. Defendants shall, to the best of their ability, ensure
23 that the receipt dates are accurate based on the primary documents, authenticated records,
24 and/or consultation with plaintiffs' counsel.

25
26 ¹ "Reasons numbered 1, 2, 4, 5, and 6 are too general to explain any particular delay suffered by
27 one or more class members. . . . By definition, the 'normal Seattle District Office processing time'
28 includes the time it takes to conduct criminal history and background checks, review the file, conduct an
interview, and reach a decision on the application. . . . The fact that N400 applications go through a series
of reviews at two different agencies does not explain why certain applications are processed within five to
ten months and others have languished for years." Dkt. # 216 at 3.

1 (2) The normal processing time for N400 applications in the Seattle Field Office
2 has varied over time. For purposes of this Order, the Court adopts the following
3 “normal” time frames:

4 (a) N400 applications filed before June 2007 – 10 months

5 (b) N400 applications filed in June 2007 – 15 months

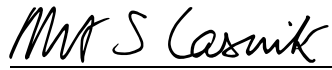
6 (c) N400 applications filed between July 1, 2007, and the present – 12 months

7 (3) Although the stated time frames are not guarantees, where an application is
8 subject to delays beyond what is normally expected, the burden falls on defendants to
9 explain why the application could not be adjudicated within the “normal” processing time.
10 After complying with paragraph (1) above, defendants shall, within twenty-one days of the
11 date of this Order, provide detailed and specific information regarding the processing of
12 any applications that have not been adjudicated within the “normal” processing time.
13 Activities included in the processing of all applications, such as conducting criminal
14 history and background checks, reviewing the file, scheduling and conducting an
15 interview, and reaching a decision on the application, cannot explain extraordinary delays.
16 If FBI involvement is blamed for a delay, defendants shall provide the date on which the
17 FBI’s services were requested, the date that a request for expedited review was made,
18 what phase(s) of the review process has been completed, what information was discovered
19 that has delayed the processing, the expected date by which the issues raised will be
20 resolved, and any other information that might provide good cause for the delay.² If an
21 outstanding N-14 request for additional information is the purported cause of a delay,
22 defendants shall identify the information or lack thereof that prompted the request and the
23 date on which defendants were first aware of the problem. While information or
24 deficiencies that first appeared at the interview may justify additional delay, issues that
25 were apparent for months but were not acted upon will probably not extend the “normal”
26 processing time absent good cause.

27 ² If the information regarding the FBI’s activities presents a risk to national security, it may be
28 provided *in camera* with a summary to counsel.

1 (4) The information required in paragraph (3) above shall be updated every two
2 months until all of the class members' applications have been adjudicated.

3
4 Dated this 25th day of August, 2008.

5 
6

7 Robert S. Lasnik
8 United States District Judge
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28